

**United States Department of Labor
Board of Alien Labor Certification Appeals
Washington, D.C. 20001**

'Notice: This is an electronic bench opinion which has not been verified as official'

Date: September 5, 1997

Case No. 95 INA 676

In the Matter of:

BERNAT BERMAN,
Employer

on behalf of

BEATA CHODARA,
Alien

Appearance: P. W. Janaszek of New York, New York, Agent

Before : Holmes, Huddleston, and Neusner
Administrative Law Judges

FREDERICK D. NEUSNER
Administrative Law Judge

DECISION AND ORDER

This case arose from a labor certification application that was filed on behalf of BEATA CHODARA (Alien) by BERNAT BERMAN (Employer) under § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the Act), and the regulations promulgated thereunder, 20 CFR Part 656. After the Certifying Officer (CO) of the U.S. Department of Labor at New York, New York, denied the application, the Employer and the Alien requested review pursuant to 20 CFR § 656.26.¹

Statutory Authority. Under § 212(a)(5) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified, and available at the time of the application and at the place where the alien is to perform

¹The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File (AF), and any written argument of the parties. 20 CFR § 656.27(c).

such labor; and (2) the employment of the alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed at that time and place. Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.²

STATEMENT OF THE CASE

This case involves an application (ETA 750A) for permanent full time employment of the Alien as a Kosher Household Cook³ with the following duties:

Prepare, season, and cook soups, meats, vegetables according to Kosher dietary requirements. Bake, broil, and steam meat, fish and other food. Prepare Kosher meats, such as Kreplach, Stuffed Cabbage, Matzo Balls. Decorate dishes according to the nature of the celebration. Purchase foodstuff and account for the expenses involved.

The Employer specified in the ETA 750A that the Alien was to work a basic forty hour week without overtime anticipated. The hours were from 8:00 a.m. to 5:00 p.m., at \$12.81 per hour. The Employer further stated that the position required two years of experience in the job offered.

The Employer attached the following statement to clarify his job offer:

Please be advised that we have an opening for a position of Cook, Live-Out in our household. My wife is employed full

²Administrative notice is taken of the Dictionary of Occupational Titles, published by the Employment and Training Administration of the U. S. Department of Labor.

³DOT No. 305.281-010 Cook (Domestic ser.)Plans menus and cooks meals, in private home, according to recipes or tastes of employer: Peels, washes, trims, and prepares vegetables and meats for cooking. Cooks vegetables and bakes breads and pastries. Boils, broils, fries, and roasts meats. Plans menus and orders foodstuffs. Cleans kitchen and cooking utensils. May serve meals. May perform seasonal cooking duties, such as preserving and canning fruits and vegetables, and making jellies. May prepare fancy dishes and pastries. May prepare food for special diets. May work closely with persons performing household or nursing duties. May specialize in preparing and serving dinner for employed, retired or other persons and be designated Family-Dinner Service Specialist(domestic ser.).

time as a Teacher.

I am also, employed full time at Edison Lighting Company and I hold executive position. I am not in a position to prepare meals because of my demanding work schedule.

We have eleven year old son.

The employment of Cook, Live Out is necessary for us in order to provide our child with proper nutritious meals on a regular basis. Position is permanent and full time and we are in the financial position to pay the prevailing wage. At the present time all cooking duties are performed by my family member who no longer can do this because of personal reasons. At present time we do not employ any US workers in the home.

All other household chores are performed by a part time help who comes to our house when needed.

Due to religious considerations meals in our house must be prepared in accordance with the principles of Kosher cuisine.

The Alien stated she was currently residing in Poland and that her vocational experience included the following :

Cut, trimmed, boned, tied and grinded (sic) meats, using butcher's cutlery and powered equipment, such as electric grinder and bandsaw. Cut, trimmed and boned carcass section of prime cuts, using knives, meat saw, cleaver, bandsaw. Prepared traditional Kosher Turkey Salami, Beef Salami, Lamb steaks and beef flanks

Notice of Findings. The CO's Notice of Findings (NOF) said the application for certification would be denied, subject to rebuttal, on grounds that the Employer had failed to show that his requirements for the job opportunity are the minimum necessary for the performance of the job under 20 CFR § 656.21 (b)(5). The CO noted, moreover, that the Alien's experience is as a "Butcher" rather than as a Kosher Cook. The Employer was instructed to either submit evidence to show that the Alien has the requisite experience or amend his requirements for the job.

Rebuttal. The Employer's rebuttal was limited to the following statement: "Please, find enclosed with this Application a letter of reference relating to the alien worker's employment and qualifications." No letter of reference was submitted and no offer to amend the application was made, however.

Final Determination. The CO's Final Determination denied the application for alien labor certification on grounds that the Employer failed to offer evidence of his compliance with 20 CFR § 656.21(b)(5).

Appeal. The Employer requested a review of the denial of his application and the Appellate File was referred to BALCA. It is

noted that Employer's appeal did not take exception to the CO's ruling under 20 CFR § 656.21(b)(5).

DISCUSSION

An employer is required to document that its requirements for the job opportunity, as described, represent the employer's actual minimum requirements pursuant to 20 CFR § 656.21(b)(5). The Employer's failure to take exception to the CO's ruling under 20 CFR § 656.21(b)(5) is of particular significance because under 20 CFR § 656.25(e)(3) all NOF findings that are not rebutted are deemed to have been admitted by the applicant.

We agree with the CO that the only experience shown by the Alien in the ETA 750B is as a Butcher and not as a Household Cook. As the applicant failed to present documentation that would support a finding that the Alien meets Employer's requirements of experience in the offered job, it must be concluded that the CO's denial of this application was supported by the evidence of record and was well reasoned.

Accordingly, the following order will enter.

ORDER

The Certifying Officer's denial of labor certification is hereby Affirmed.

For the Panel:

FREDERICK D. NEUSNER
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.

BALCA VOTE SHEET

Case No. 95 INA 676

BERNAT BERMAN, Employer
BEATA CHODARA, Alien

PLEASE INITIAL THE APPROPRIATE BOX.

	:	:	:	:
	:	CONCUR	:	DISSENT
	:	:	:	COMMENT
	:	:	:	:
Holmes	:	:	:	:
	:	:	:	:
	:	:	:	:
Huddleston	:	:	:	:
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Thank you,

Judge Neusner

Date: August 5, 1997